

JUDGE KAPLAN

08 CV 0085

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HOZAIFA ARSIWALA
(A75 964 537),

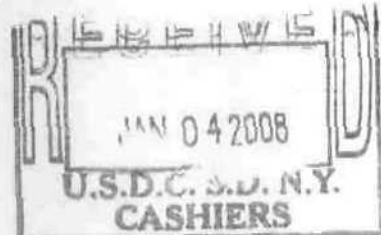
Petitioner,

COMPLAINT

-against-

DEPARTMENT OF HOMELAND SECURITY,
THE UNITED STATES CITIZENSHIP & IMMIGRANT
SERVICES, and the FEDERAL BUREAU of
INVESTIGATION,

Respondents.
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PETITION FOR MANDAMUS

To the Honorable Judges of the United States District Court, Southern District of New York:

Petitioner HOZAIFA ARSIWALA (A75 964 537), herein petitions this Court through this

Mandamus action to direct the Department of Homeland Security to finalize his petition for
citizenship forthwith.

JURISDICTION

1. The Administrative Procedure Act requires that administrative agencies have a duty to decide issues presented to them within a reasonable time. 5 U.S.C. §555(b).
2. 28 U.S.C. §1331 confers jurisdiction on District Courts to review actions of federal agencies. 28 U.S.C. §1331 note 48. Indeed, reviewing courts have a duty to compel agency action unreasonably delayed. Neder v. F.C.C., 50 F.2d 182, 172 U.S. App. D.C. 1 (C.A.D.C. 1975).
3. Furthermore, 28 U.S.C. §1361 provides that "district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

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4. Under Rule 81 of the Federal Rules of Civil Procedure, writs of mandamus are abolished.
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“Relief heretofore available by mandamus ... may be obtained by appropriate action or by appropriate action or by appropriate motion under the practice prescribed in these rules”.

5. Section 279 of the Immigration and Nationality Act, 8 U.S.C. § 1329 confers jurisdiction upon United States District Courts for review of all cases arising under the Immigration and Nationality Act, and the Administrative Procedures Act provides for judicial review of federal administrative agencies, authorizing the court to compel agency action unlawfully withheld or unreasonably denied.
6. Jurisdiction also lies under the United States Constitution because a benefit has been conferred to the Petitioners and the executive arm of the government is required to assure that the laws are discharged and complied with.

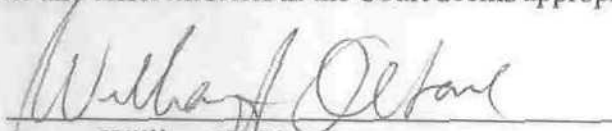
STATEMENT OF FACTS

7. Petitioner HOZAIFA ARSIWALA (A75 964 537), a permanent resident, applied for US citizenship on or about June 5, 2006. See Exhibit “A”.
9. Nearly one year later, pursuant to inquiries by counsel, Mr. Arsiwala was advised that his case has been delayed because of a background check. See Exhibit “B”.
10. No further word has subsequently been heard from the USCIS about the status of this case.
11. Notwithstanding all efforts of self-help by the petitioner, the case remains immobile because the FBI background check likewise remains unfinalized.

13. Petitioner faces the possibility that his case will remain unadjudicated for substantial additional time because the USCIS failed and/or refuses to adjudicate the Petitioner's case.
14. The law permits the District Court to adjudicate cases in these circumstances. The USCIS on their own web-site claims that N-400 cases in New York are being adjudicated in seven months. See Exhibit "C". This case has been pending for more than a year with no end in sight. The USCIS is statutorily mandated to adjudicate and finalize promptly naturalization applications.

WHISEFORE, Petitioner respectfully request through this Mandamus action that petitioner's naturalization case be finalized and that the oath taking ceremony be promptly scheduled or that the Court perform such ceremony, and other further and different relief as the Court deems appropriate.

Dated: December 19, 2007



William H. Oltarsh
Oltarsh & Associates, P. C.
494 Eighth Avenue, Suite 1704
New York NY 10001
(212) 944-9420



Receipt		NOTICE DATE June 16, 2006	
CASE TYPE N400 Application For Naturalization		INS AC A 075 964 737	
SEAL/STAMP/NO. MPR ESC *001647574	RECEIVED DATE June 05, 2006	PRIORITY DATE June 05, 2006	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS
 HOZAILA SHABBIR ARSIWALA
 c/o WILLIAM OLTARSH
 OLTARSH & ASSOCIATES P.C.
 494 EIGHTH AVENUE 1704
 NEW YORK NY 10001

PAYMENT INFORMATION:

Single Application Fee:	\$400.00
Total Amount Received:	\$400.00
Total Balance Due:	\$0.00

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: November 04, 1972
 Address Where You Live: 235 E 57TH STREET # 11B
 NEW YORK NY 10022

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 30 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCS) at 1-800-375-5283. If you are hearing impaired, please call the NCS TDD at 1-800-767-1835.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:
 US IMMIGRATION AND NATURALIZATION SERVICE
 75 LOWER WELDEN STREET
 ST ALBANS VT 05479

INS Customer Service Number:
 (800) 375-5283

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U.S. Citizenship and Immigration Services New York City NY Processing Dates Posted November 14, 2007

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

District Office Processing Dates for **New York City NY** Posted November 14, 2007

Form	Form Name	Processing Timeframe:
I-131	Application for Travel Documents	3 Months
I-485	Application to Register Permanent Residence or Adjust Status	March 24, 2007
I-600	Petition to Classify Orphan as an Immediate Relative	June 17, 2007
I-600A	Application for Advance Processing of Orphan Petition	June 17, 2007
I-765	Application for Employment Authorization	11 Weeks
N-400	Application for Naturalization	7 Months
N-600	Application for Certification of Citizenship	3 Months

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[U.S. Department of Homeland Security](#)

CERTIFICATE OF SERVICE

I, Jennifer Oltarsh, an attorney duly admitted to practice before the courts of the state of New York, hereby confirm under the penalty of perjury that I served a copy of the within Mandamus complaint by personal service on the US attorney and by regular mail by depositing same in a post paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, to the Department of Homeland Security:

District Director
USCIS
26 Federal Plaza
New York, NY 10278

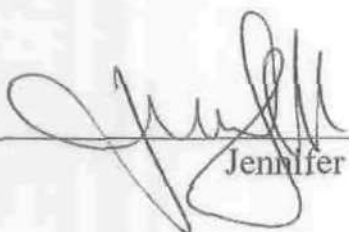
And by causing the same to be personally served on

U.S. Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007

on this 1th day of ~~October, 2007~~ *January, 2008*

New York, NY

~~October, 2007~~


Jennifer Oltarsh

1/4/08